HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. F.A. 183 of 2001

(Old No. 167/1994)

U.P. Avas Evam Vikas Parishad

104 M.G. Marg Lucknow. (Appellant)

Vs

Dara Singh S/o Lok Sri Maharaj Singh.

R/o Village Kichha. Tahsil Kichha

Distt. Nainital

Approved for reporting.

_____ Date of decision

25.8.2004

Not approved for reporting

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 183 of 2001
(Old No. 167/1994)

U.P. Avas Evam Vikas Parishad
104, M.G. Marg, Lucknow through
Housing commissioner

……..
Appellant

Versus

Dara Singh s/o Lat Sri Maharaj Singh
R/O village Kichha, Tehsil Kichha
District Nainital

……. Respondent

Dated: 25.8.2004

Hon. Rajesh Tandon, J.

Heard the learned counsel for the parties.

Order was passed earlier on 26.4.2004 directing the reference Court to implead U.P. Awas Evam Vikas Parishad as party and decide the reference. After passing the order the counsel for the respondent has filed an application for recalling the order on the ground that he has not been heard. The order was recalled on 7.8.2004 and the writ petition was fixed for hearing.

A perusal of the order of reference shows that Awas Evam Vikas Parishad was not impleaded as a party and hence the counsel for the appellant has stated that he was deprived of the opportunity of leading evidence. Briefly stated that the land in village Kichha, Tehsil Kichha, District Nainital was acquired vide notification dated 10th October 1980 and 29th November, 1980. Notification under section 32 of the U.P. Avas Evam

Vikas Parishad Act 1985 was made and published on 4th January 1983 and 22nd January 1983. The Land Acquisition Officer passed an award granting a compensation at the rate of Rs. 13,986.01 per bigha. The learned Addl. District Judge, Nainital enhanced the compensation from 13,986.1 per bigha to Rs.30,000/- per bigha for the area of 100 meter from the road and behond 100 meter Rs.20,000/- per bigha.

A perusal of the record shows that U.P. Awas Evam Vikas Parishad was not made a party before the District Judge, Nainital. The counsel for the appellant has submitted that since the acquiring body has not been impleaded as a party, therefore, the entire proceedings are wholly illegal. Reliance has been placed on Sub section (1) of Section 18 of the Land Acquisition Act, 1894 which reads as under:

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.

The present appeal has been filed by the U.P. Avas Evam Vikas Parishad challenging the order of reference that the Parishad was not impleaded as a party.

I have perused the record of the reference Court and as will appear from the memo of appeal, only the State of U.P. through Collector, Nainital has been made a party.

A perusal of the record of the Land Acquisition Officer as well as the proceedings before the Reference Court shows that the State of U.P., through Collector, Nainital, alone, has been

Impleaded as a party in the Reference Court and the U.P. Avas Evam Vikas Parishad has not been impleaded as party.

The matter is fully covered by the law laid down by the Apex Court in U.P. Avas Evam Vikas Parishad vs. Gyan Devi (1995) 2 SCC 326, it has been held that the local authority would be a person aggrieved who can invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award.

In the case of U.P. Avas Evam Vikas Parishad Vs. Gyan Devi reported in (1995) 2 SCC 326, it has been held that the local authority would be a person aggrieved who can invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award.

Similar view has been taken in the case of Kanak & another Vs U.P. Avas Evam Vikas Parishad reported in (2003) 7 Supreme Court Cases 693, where similar controversy came up for decision before the Apex Court, where the Apex Court, relying upon the judgment of U.P. Avas Evam Vikas Parishad Vs. Gyan Devi reported in (1995) 2 SCC 326, has held as under:

> "32. *It is not in doubt or dispute that no formal notice was served upon the respondent. A notice to a person, for whose benefit the land is acquired or who is responsible for payment of compensation amount, was mooted before the courts of law on the construction of Section 50 of the Land Acquisition Act. It was held that sub-section (2) of Section 50 must be construed as conferring a right of notice on the local authority at the stage of determination of the amount of compensation before the Collector as well as the Reference Court. It is not in dispute that the respondent was not represented*

even before the Collector In the aforementioned situation, this Court in ***Gyan Devi*** *held:*

> *'In other words the right conferred under Section 50(2) of the LA Act carries with it the right to be given adequate notice by the Collector as well as the Reference Court before whom the acquisition proceedings are pending of the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority under Section 50(2) of the LA Act, can, therefore, be regarded as an integral part of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the Reference Court and has not suffered any prejudice on account of failure to give such notice."*

33. It is not correct to contend that by reason of non-service of notice the respondent was not prejudiced. The exception carried out by this Court in the matter of service of notice to the local authority is not only confined to its knowledge about the pendency of the acquisition proceedings before the Collector or the Reference Court but also any prejudice on account thereof. The said two conditions are to be read conjunctively and not disjunctively.

34. The respondent filed a writ petition because it was seriously prejudiced. This Court in Gyan Devi envisaged the following legal situations:

(i) No notice was given to the local authority under sub-section (2) of Section 50 of the LA Act and as a result the local authority could not appear before the Collector to adduce evidence;

(ii) Notice was served on the local authority and in response to said notice the local authority appeared before the Collector; and

(iii) Notice was served on the local authority but in spite of service of such notice the local authority failed to appear and adduce evidence before the Collector.

35. The Court laid down the criteria where the local authority would be a necessary party or proper party. It was observed:

'Since the amount of compensation is to be paid by the local authority and it has an interest in the determination of the said amount, which has been given recognition in Section 50(2) of the LA Act, the local authority would be a person aggrieved who can invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award in spite of the proviso precluding the local authority from seeking a reference. Such a challenge will, however, be limited to the grounds on which judicial review is permissible under Article 226 of the Constitution. In a case where the

local authority has failed to appear in spite of service of notice the local authority can have no cause for grievance. Even in such a case it may be permissible for the local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award if it is vitiated by mala fides or is perverse.'

36. It was further held that presence of the local authority is necessary for a just decision on the question involved in the proceedings before the Reference Court as that would enable it to adduce evidence therein and as such it was entitled to be impleaded as a party.

38. However, having said so, in our opinion, the High Court should have remitted the matter back to the Reference Court with a direction that the respondent Parishad may be impleaded as a party so as to enable it to cross-examine the witnesses examined on behalf of the claimants and examine its own witnesses and bring on record such other materials as it may deem fit and proper. It goes without saying, it would also be open to the claimants to adduce evidence to the contra."

The reference Court shall decide the amount of compensation and the person to whom it is payable and further apportionment of the compensation among the persons interested. The word "to whom it is payable" is vide enough to cover the acquiring body who paid compensation. Therefore, in the reference court and the acquiring body ought to have been impleaded as a necessary party.

In view of the aforesaid the appeal is allowed and the matter is sent back to the reference Court for deciding afresh

after impleading U.P. Awas Evam Vikas Parishad as a party, within a period of three months from filing of the certified copy of this order.

However, the money already paid shall remain with the claimant respondent. There will be no order as to costs.

(Rajesh Tandon, J.)

25.8.2004
Dhayani